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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,170	01/14/2004	Rhonda Schrader	35049-95382	3547
23644	7590	09/05/2006	EXAMINER	
BARNES & THORNBURG LLP			PRINCE, FRED G	
P.O. BOX 2786			ART UNIT	
CHICAGO, IL 60690-2786			PAPER NUMBER	

1724

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,170	Applicant(s) SCHRADER, RHONDA	
	Examiner Fred Prince	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-30 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 7-9, 16-18, 22-25, 28 and 29 are again rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trail (US Pat No 4,181,612).

Trail teaches an apparatus (Figs. 1-2) for servicing a bird cage comprising an animal enclosure comprising a bird cage (4) that has a permeable floor (12), a hopper (10) configured to permit draining of water, an inherent animal support (68), the “generally horizontal” receptacle having an edge (1. at the top of trough 10, 2. where trough 10 and tube 14 meet, and 3. the bottom of tube 14) and defining a cavity permitting passage therethrough of the water and waste from the enclosure, a filtration

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unit (16), a pump (18) delivering water from the filtration unit (16) back to the receptacle (10) to permit circulation water (see Figures 1 & 2 and column 3 line 48-column 4 line 53), the water inherently containing a "fragrance" as it contains ammonia and other aromatic chemicals. Regarding the limitation that the cavity is configured to permit passage of a constant body of liquid, it is submitted that the recitation is one of intended use that fails to add structure to the tray. Clearly, providing an intermittent or constant body of liquid to the cavity fails to alter the cavity itself. If it is applicant's position that the recitation somehow adds structure to the tray, it is submitted that the tray is capable of receiving a constant body of liquid

Per claims 9 and 23 it is noted that applicant recites generic "support". It is submitted that the grid (68) is a generic "support".

4. Claims 1-3, 7-9, 11-12, 16-18, 22-25 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bungler (US Pat No 4,424,129).

Bungler teaches a system comprising a "generally horizontal" tray (10) has an animal support means that has a permeable floor (col. 3, lines 1-10), a hopper (13) configured to permit draining of water, the "generally horizontal" receptacle having an edge (Fig. 1) and defining a cavity permitting passage therethrough of the water and waste from the enclosure, a filtration unit (18), a pump (16) delivering water from the filtration unit back to the receptacle to permit continuous circulation of water (Fig. 1, col. 3, lines 55-61), the system further including bacteria for contaminant degradation (col. 5, lines 17-22), the water inherently containing a "fragrance" as it contains ammonia and other aromatic chemicals.

5. Claims 10-15, 19-21, 24-27 and 30 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Trail.

Trail is described above. Trail further discloses that the filtration unit further comprises a screen (28), and carbon filter (32; col. 4, lines 5-7); wherein the filter supports bacteria enhancing biological treatment (col. 4, lines 43-48). Trail fails to disclose an additional porous filter layer.

It would have been readily obvious to the skilled artisan to provide the a filter with an additional porous layer in order to provide additional treatment to the water.

Per claims 13-14, 19-20, 26 and 30 Trail do not disclose a UV sterilization unit.

It would have been obvious for the skilled artisan to have added a UV sterilization unit to the system of Trail in order to provide additional treatment to the water treated in the system.

Per claims 15, 21, 27 and 30, Trail do not disclose an automatic shut-off control the pump.

It is well within the purview of the skilled artisan to use a float to automatically control a pump, in order to, for example, control the level of fluid in a receptacle (see, for example, US Pat No 4,338,337 to Frankl).

Per claim 24, Trail does not explicitly disclose that a constant body of liquid may flow through the cavity. It is submitted that it would have been readily obvious for the skilled artisan to modify the method of Trail et al. such that it includes providing a constant body of water to the cavity in order to, for example, provide continuous flushing of the receptacle (see, for example, US Pat No 3,633,547 to Stevens et al.).

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6. Claims 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Trail in view of Niki (US Pat No 4,448,152).

Trail is described above. Trail does not disclose a tray comprising three sides and the slope of the tray adjustable by screws.

In any case, Niki discloses providing a waste system with a tray (4) comprising three sides (col. 2, lines 25-29) in order to, for example, direct filth away from animals depositing the filth.

It would have been readily obvious for the skilled artisan to modify the system of Trail such that it includes a tray comprising three sides in order to, for example, direct filth away from animals depositing the filth.

Per claim 6, Niki also discloses that the slope of each tray is adjusted depending on the type of apparatus and the results desired (col. 3, lines 52-60). Regarding the tray being adjustable by screws, it is submitted that it is well known in the art to adjust a tray by utilizing screws in order to, for example, easily adjust the slope of the tray (see, for example, US Pat No 2,565,992 to Rosenfelder). Accordingly, it would have been readily obvious for the skilled artisan to modify the tray of Trail, as modified by Niki, such that it includes for screws for adjusting the height of the tray in order to, for example, easily adjust the slope of the tray, as known in the art.

Response to Arguments

Applicant's arguments filed August 17, 2006 have been fully considered but they are not persuasive. Applicant argues that Trail does not teach a generally horizontal

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receptacle with a cavity having an edge permitting passage of liquid. The examiner disagrees. Trail clearly shows in Fig. 1 a receptacle creating an edge where the trough and tube meet. Trail further discloses terminal edge at the top of the trough and a terminal edge at the bottom of the tube 14 of Trail. Accordingly, whether applicant's scope is merely an edge, as claimed, or a terminal edge, which applicant does not claim, the system taught by Trail is well within the scope of the claim.

Applicant asserts that Trail does not disclose "a generally horizontal" receptacle as it discloses a conical trough. In the remarks submitted to the Office on August 17, 2006, applicant defines "a generally horizontal" receptacle as a receptacle that comprises a slope. The receptacle of Trail has a slope and a cavity permitting liquid therethrough. Accordingly, while applicant's argument has been considered it fails to patentably distinguish the instant invention over the prior art.

Applicant argues that Trail does not disclose ~~that~~ a constant body of liquid passing through the cavity. With regards to the instant apparatus claims, it is noted that constant flow of liquid is clearly a process limitation that fails to add any structure to the system claimed and is merely functional language. Further, it is noted that a pump is capable of being operated continuously by simply not turning off said pump. With regard to applicant's instant method claims, it is submitted that the claims are not patentable for the reasons presented in paragraphs four and five above.

Applicant appears to argue that Bunger is not analogous art. However, it is respectfully submitted that Bunger is pertinent to the claimed subject matter for the reasons provided in the rejection. Applicant also argues that the receptacle of Bunger

provides a utility that is different from that of the instant invention. It is respectfully submitted that the utility taught by Bunger does not preclude a separate utility such as that of the instant claim. Accordingly, while the arguments have been considered, the arguments fail to patentably distinguish the instant invention over the prior art.

Applicant alleges that Trail teaches a funnel shaped trough that cannot hold a constant body of liquid. However, it is noted that applicant does not disclose in the instant specification that the tray is capable of holding a constant body of liquid. Applicant merely discloses that the tray is capable of receiving a continuous flow of water. Clearly, the receptacle of Trail is capable of receiving a continuous flow of water. Further, it is noted that applicant is arguing a limitation not claimed. Accordingly, while the argument has been considered, the argument fails to patentably distinguish the instant invention over the prior art.

Applicant argues that the tray of Niki cannot hold a constant body of liquid. For the reasons provided in the immediately preceding paragraph above, the argument fails to patentably distinguish the instant invention over the prior art. Further, it is noted that providing a continuous flow of water to a tray in no way alters the structure of the tray.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the skilled artisan would recognize the benefits derived from utilizing a tray with three sides to facilitate efficient waste removal, a central goal of Trail.

Applicant argues that Niki does not teach an animal waste containment system. However, it is noted that the system of Niki is, indeed, an animal waste containment system.

Applicant argues that there is no evidence that the spray and nozzle structures of Trail would work with space (4) described in Trail. However, it is submitted that the structures of Trail need not work with space (4). In the invention of Trail, modified by Niki, the structures remain in the housing of Trail.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Fred Prince
Primary Examiner
Art Unit 1724

fgp
8/28/06